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March 9, 2012

*via hand delivery*

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TW-A325  
Washington, DC 20554

**Attn: CGB Room 3-B431**

**Re: Dawson Memorial Baptist Church Request for Exemption from the  
Commission's Closed Captioning Rules  
Case No. CGB-CC-0144  
CG Docket No. 06-181**

FILED/ACCEPTED

MAR - 9 2012

Federal Communications Commission  
Office of the Secretary

Dear Ms. Dortch:

Pursuant to the Commission's Request for Comment, Telecommunications of the Deaf and Hard of Hearing Inc. (TDI), the National Association of the Deaf (NAD), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Association of Late-Deafened Adults (ALDA), and the Cerebral Palsy and Deaf Organization (CPADO), collectively, "Consumer Groups," respectfully submit this Opposition to the petition of Dawson Memorial Baptist Church ("Dawson") to exempt its programming from the Commission's closed captioning rules, 47 C.F.R. § 79.1 (2010).<sup>1</sup> Consumer

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<sup>1</sup> Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules, Dawson Memorial Baptist Church, Case No. CGB-CC-0144, CG Docket No. 06-181 (Feb. 8, 2012), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0208/DA-12-163A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0208/DA-12-163A1.pdf); Petition for Exemption from Closed Captioning Requirement for Dawson Memorial Baptist Church, Case No. CGB-CC-0144, CG Docket No. 06-181 (Jan. 18, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021755294> [hereinafter *Dawson Petition*].

Groups oppose the petition because it does not demonstrate that Dawson cannot afford to caption its programming.

Consumer Groups acknowledge the efforts of Dawson to provide its programming to “members that cannot physically attend religious services, mainly the elderly, sick, and disabled.”<sup>2</sup> This constituency, however, is one that may distinctly benefit from the inclusion of closed captions. The requested exemption would deny equal access to Dawson’s programming to members of its community who are deaf or hard of hearing. Maximizing accessibility through the comprehensive use of closed captions is a critical step in ensuring that all viewers who are deaf or hard of hearing can experience the important benefits of video programming on equal terms with their hearing peers.

Because the stakes are so high for the millions of Americans who are deaf or hard of hearing, it is essential that the Commission grant petitions for exemptions from captioning rules only in the rare case that a petitioner conclusively demonstrates that captioning its programming would impose a truly untenable economic burden. To make such a demonstration, a petitioner must present detailed, verifiable, and specific evidence that it cannot afford to caption its programming, either with its own revenue or with alternative sources.

Consumer Groups oppose the petition because Dawson fails to present a compelling case that captioning its programming would impose an undue economic burden. The petition does not demonstrate that Dawson cannot afford to caption its programming, or that it has investigated, much less exhausted, all available alternative options for providing captioning.

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<sup>2</sup> *Dawson Petition*, *supra* note 1, at 2.

Under section 713(d)(3) of the Communications Act of 1934 (“1934 Act”),<sup>3</sup> as added by the 1996 Act and amended by section 202(c) of the CVAA, “a provider of video programming or program owner may petition the Commission for an exemption from the [closed captioning] requirements of [the 1934 Act], and the Commission may grant such petition upon a showing that the requirements . . . would be economically burdensome.” In its October 20, 2011 Interim Standard Order, the Commission directed the Consumer and Governmental Affairs Bureau to evaluate all exemption petitions filed subsequent to October 8, 2010 using the “undue burden” standard in section 713(e) of the 1934 Act, pursuant to the Commission’s existing rules in 47 C.F.R. § 79.1(f)(2)-(3).<sup>4</sup>

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.<sup>5</sup> If a petitioner sufficiently demonstrates such an inability, it must also demonstrate that it has exhausted alternative avenues for obtaining assistance with captioning its

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<sup>3</sup> Pub. L. No. 416, ch. 652, 48 Stat. 1064 (1934) (codified as amended at 27 U.S.C. 613(d)(3)).

<sup>4</sup> *Order, Interpretation of Economically Burdensome Standard*, CG Docket No. 06-181, 26 FCC Rcd. 14,941, 14,961, ¶ 37 (Oct. 20, 2011), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db1123/FCC-11-159A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1123/FCC-11-159A1.pdf). The Commission proposed to finalize this interim directive in a Notice of Proposed Rulemaking released with the 2011 ISO. *Interpretation of Economically Burdensome Standard*, CG Docket No. 11-175, 26 FCC Rcd. 14,941, 14,961-62, ¶¶ 38-39 (proposed Oct. 20, 2011), 76 Fed. Reg. 67,397 (Nov. 1, 2011), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/011/db1123/FCC-11159A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/011/db1123/FCC-11159A1.pdf). See also 2011 ISO at 14,960, ¶ 36. In some early adjudications, the Commission specifically analyzed exemption petitions under the four-factor rubric in section 713(e), analyzing whether each of the four factors weighed for or against granting a particular petition. E.g., *Home Shopping Club L.P.*, Case No. CSR 5459, 15 FCC Rcd. 10,790, 10,792-94 ¶¶ 6-9 (CSB 2000). Over the past decade, however, this factor-based analysis has evolved into several specific evidentiary requirements that must be satisfied to support a conclusion that a petitioner has demonstrated an undue economic burden sufficient to satisfy the requirements of section 713(e). See *Anglers for Christ Ministries*, Case Nos. CGB-CC-0005 and CGB-CC-0007, CG Docket No. 06-181, 26 FCC Rcd. 14,941, 14,955-56, ¶ 28 (Oct. 20, 2011) [hereinafter *Anglers 2011*].

<sup>5</sup> See *Anglers 2011*, *supra* note 4, 26 FCC Rcd. at 14,955-56, ¶ 28.

programming.<sup>6</sup> Where a petition fails to make either of the foregoing showings, it fails to demonstrate that providing captions would pose an undue burden, and the Commission must dismiss the petition.<sup>7</sup>

#### **I. Dawson's Ability to Afford Captioning**

To sufficiently demonstrate that a petitioner cannot afford to caption its programming, a petition must provide both detailed information regarding the petitioner's financial status and verification that the petitioner has diligently sought out and received accurate, reasonable information regarding the costs of captioning its programming, such as competitive rate quotes from established providers.<sup>8</sup> Both showings are essential to enable the Commission and the public to verify that the petitioner in fact cannot afford to caption its programming and eliminate the possibilities that captioning would be possible if the petitioner reallocated its resources or obtained more reasonable price quotes for captioning its programming.

A successful petition requires, at a bare minimum, detailed information regarding the petitioner's finances and assets, gross or net proceeds, and other documentation "from which its financial condition can be assessed" that demonstrates captioning would present an undue economic burden.<sup>9</sup> While Dawson provides detailed budget information from 2007 to 2012, the information provided does not demonstrate that captioning costs would impose an undue financial burden.<sup>10</sup>

Dawson provides price quotes for two captioning services, with a minimum cost of \$11,960 annually.<sup>11</sup> Dawson's total budget for 2012 is about \$8.27 million.<sup>12</sup> Dawson

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<sup>6</sup> See *id.*

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

<sup>9</sup> E.g., *Survivors of Assault Recovery*, Case No. CSR 6358, 20 FCC Rcd. 10,031, 10,032, ¶ 3 (MB 2005), cited with approval in *Anglers 2011*, *supra* note 4, 26 FCC Rcd. at 14,956, ¶ 28 n.100.

<sup>10</sup> *Dawson Petition*, *supra* note 1, at Exhibit A.

<sup>11</sup> *Id.* at 2.

claims, however, that it has already allocated all of its budgeted funds to other services, ministries, and missions for 2012 and currently does not have any money available to provide captioning services, and accordingly that any increase in costs for captioning could “reduce or eliminate other mission related activities of the church.”<sup>13</sup>

When evaluating the financial status of a petition, however, the Commission does not consider “the extent to which the provision of captioning would curtail other activities important to a petitioner’s mission.”<sup>14</sup> Rather, the Commission “balance[s] the need for closed captioned programming against the potential for hindering *the production and distribution of programming*.”<sup>15</sup> The quoted cost of closed captioning represents less than 0.01% of Dawson’s overall budget, and Dawson provides no substantive evidence to suggest that such a minor increase in cost would in fact hinder its production and distribution of programming.

Dawson also does not disclose any information about its assets. Its detailed budgets seem to indicate that it operates at a loss, but it is impossible to determine whether requiring captions would make any further loss untenable to Dawson’s operations. Without more information, it is impossible to conclude that Dawson does not have substantial assets that it could direct toward closed captioning efforts without imposing an undue economic burden.

## **II. Alternative Avenues for Captioning Assistance**

Even where a petition succeeds at demonstrating that a petitioner cannot afford to caption its programming, the petitioner must also demonstrate that it has exhausted all alternative avenues for attaining assistance with captioning its programming.<sup>16</sup> While

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<sup>12</sup> *Id.* at Exhibit A.

<sup>13</sup> *Id.* at 3-4.

<sup>14</sup> See *Anglers 2011*, *supra* note 4, 26 FCC Rcd. at 14,951, ¶ 20 (internal quotations omitted).

<sup>15</sup> *Id.* (emphasis in original).

<sup>16</sup> See *id.* at 14,955-56, ¶ 28 (internal citations omitted).



Dawson's petition demonstrates an effort was made to seek assistance from its video programming distributor, there is no evidence that it has fully investigated, much less exhausted, the alternative options available to receive captioning for its programming.

To establish that providing captions would impose an undue economic burden, a petitioner must demonstrate that it has sought out sponsorships or other sources of revenue to cover the cost of captioning its program and is unable to obtain alternative means of funding captions for its programming.<sup>17</sup> The petition contains no indication that Dawson has solicited sponsorships or other sources of revenue to cover the cost of captioning its program.

### **III. Permanent Exemptions are Inappropriate**

We also note that Dawson's request for a permanent exemption is inappropriate. The Commission has already stated that "[e]xemption from the closed captioning obligations is not designed to perpetually relieve a petitioner of its captioning obligation."<sup>18</sup> We do not believe any exemption is appropriate for Dawson's programming, but should the Commission disagree, we strongly urge that any exemption be time-limited so that Dawson will phase in captioning of its programming.

### **IV. Dawson's Request for a Two-Year Exemption is Inappropriate**

Dawson alternatively argues that it should receive a time-limited exemption because its "complex budget process" would prevent it from providing closed captions until at least 2014.<sup>19</sup> We urge the Commission to reject this argument. The Commission already granted Dawson 90 days to comply with its requirements, during which Dawson could have begun the appropriate steps towards budgeting for captioning.<sup>20</sup> A

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<sup>17</sup> See *Outland Sports*, 16 FCC Rcd. at 13607-08, ¶ 7 (2001), cited with approval in *Anglers 2011*, supra note 4, 26 FCC Rcd. at 14,956, ¶ 28 n. 103.

<sup>18</sup> *Anglers 2011*, supra note 4, 26 FCC Rcd. at 14,953, ¶ 23 (internal quotations omitted).

<sup>19</sup> *Dawson Petition*, supra note 1, at 4.

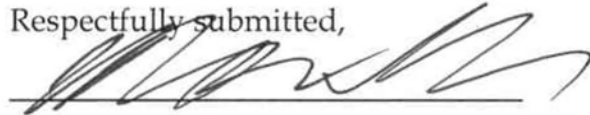
<sup>20</sup> See *Anglers 2011*, supra note 4, 26 FCC Rcd. at 14,965, ¶ 55.

refusal to proceed with captioning efforts should not provide grounds for the Commission to exempt an entity from the closed captioning rules.

## V. Conclusion

While Dawson states that it would continue to “utilize and explore” reasonable alternatives to substitute for closed captioning requirements, these claims are not substantiated in the Petition.<sup>21</sup> Dawson’s petition fails to conclusively demonstrate that it cannot afford to caption its programming or that it has exhausted all available alternatives for providing captions. Because the petition fails to establish that it would be unduly burdensome for Dawson to caption its programming under the high standard demanded under the 1996 Act and the CVAA, we respectfully urge the Commission to dismiss the petition.

Respectfully submitted,



Blake E. Reid, Esq.<sup>†</sup>

March 9, 2012

*Counsel for Telecommunications for the  
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<sup>21</sup> *Dawson Petition*, *supra* note 1, at 4.

<sup>†</sup> Counsel thanks Georgetown Law student clinicians Allyn Ginns and Cathie Tong for their assistance in preparing these comments.

**Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)**

\_\_\_\_\_/s/\_\_\_\_\_  
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**National Association of the Deaf (NAD)**

\_\_\_\_\_/s/\_\_\_\_\_  
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**Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)**

\_\_\_\_\_/s/\_\_\_\_\_  
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**Association of Late-Deafened Adults (ALDA)**

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\_\_\_\_\_/s/\_\_\_\_\_  
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### **CERTIFICATION**

Pursuant to 47 C.F.R. § 1.16 and 79.1(f)(9), I, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), hereby certify under penalty of perjury that to the extent there are any facts or considerations not already in the public domain which have been relied in the foregoing Opposition, these facts and considerations are true and correct to the best of my knowledge.

A handwritten signature in cursive script that reads "Claude L. Stout".

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Claude Stout  
March 9, 2012

### **CERTIFICATE OF SERVICE**

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on March 9, 2012, pursuant to the Commission's aforementioned Public Request for Comment, a copy of the foregoing Opposition was served by first class U.S. mail, postage prepaid, upon the petitioner:

Dawson Memorial Baptist Church  
Robert A. Silverman  
Law Offices of Bennet & Bennet, PLLC  
10 G St, NE, Suite 710  
Washington, DC 20002

A handwritten signature in black ink, appearing to read "Niko Perazich", is written over a horizontal line.

Niko Perazich  
March 9, 2012